J. W. Carroll & Sons, Division of U.S. Industries, Inc. *and* General Truck Drivers, Chauffeurs & Helpers, Local 692, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 21-CA-21409

March 7, 1983

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS JENKINS AND ZIMMERMAN

Upon a charge filed on July 19, 1982,[1] by General Truck Drivers, Chauffeurs & Helpers, Local 692, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, and duly served on J. W. Carroll & Sons, Division of U.S. Industries, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 21, issued a complaint on September 28 against Respondent, alleging that Respondent had engaged in and was engaging in an unfair labor practice affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practice, the complaint alleges in substance that, since about 1968, the Union has been the exclusive collective-bargaining representative of Respondent's employees in an appropriate unit,[2] and that since then it has maintained successive collective-bargaining agreements with Respondent, the most recent of which was effective from May 2, 1980, to May 1, 1983. The complaint further alleges that, in or about June, Respondent terminated all unit employees and closed its Carson, California, facility without affording the Union an opportunity to bargain over the effects of its closing on unit employees. Respondent has failed to file an answer to the complaint and these allegations, therefore, stand uncontroverted.

On November 26, the General Counsel filed with the Board a Motion for Summary Judgment on the ground that Respondent had failed to file an answer to the complaint as required under Section 102.20 of the Board's Rules and Regulations, Series 8, as amended. Thereafter, the Board, on December 3, issued an order transferring the proceeding to the Board and Notice To Show Cause why the General Counsel's Motion for Sumary Judgment should not be granted. Respondent did not file a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides as follows:

> The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing issued by the General Counsel and duly served on Respondent specifically states that, unless an answer to the complaint is filed by Respondent within 10 days of service thereof, "all of the allegations in the complaint shall be deemed to be admitted to be true and may be so found by the Board." Respondent, however, did not file an answer to the complaint. The documentary evidence submitted in support of the Motion for Summary Judgment further reveals that, on October 19, the General Counsel, not having received an answer to the complaint, sent Respondent a letter reminding it that an answer had not yet been received and advising it that unless one was received by October 25 he would move for summary judgment. No answer was received either by October 25 or by November 26, the date on which the Motion for Summary Judgment was filed. No good cause for failure to file an answer having been shown, in accordance with the rule set forth above, the allegations of the complaint are deemed to be admitted to be true. Accordingly, we find as true all the allegations of the

[1] All dates hereinafter are in 1982, unless otherwise indicated.

[2] The appropriate unit consists of:

All production and maintenance employees, including lead machine operators, shipping and receiving employees and local truck drivers employed by Respondent at its plant located at 22600 South Bonita Street, Carson, California, but excluding all other employees, office clerical employees, guards and supervisors as defined in the Act.

complaint and grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is a Delaware corporation engaged in the manufacture and sale of profiles and other plastic products at its facility located in Carson, California. During the past year, a representative period, Respondent sold and caused to be shipped from its place of business goods and products valued in excess of $50,000 directly to customers located outside the State of California.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

General Truck Drivers, Chauffeurs & Helpers, Local 692, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICE

Since about 1968, the Union has been the collective-bargaining representative of Respondent's employees in an appropriate unit and presently maintains a collective-bargaining agreement with Respondent effective from May 2, 1980, to May 1, 1983. In or about June 1982, Respondent terminated all unit employees and closed its Carson, California, facility without affording the Union an opportunity to bargain over the effects of its closing on said employees.

We find that by engaging in the above-described conduct, Respondent has refused to bargain collectively, and is refusing to bargain collectively, with the Union as the exclusive representative of Respondent's employees in an appropriate unit and has, therefore, engaged in, and is engaging in, an unfair labor practice within the meaning of Section 8(a)(5) and (1) of the Act.[3]

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICE UPON COMMERCE

Respondent's activity set forth in section III, above, occurring in connection with its operations described in section I, above, has a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in an unfair labor practice within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

As a result of Respondent's unlawful failure to bargain about the effects of its cessation of operations, the terminated employees have been denied an opportunity to bargain through their collective-bargaining representative at a time when Respondent might still have been in need of their services, and a measure of balanced bargaining power existed. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practice committed.

Accordingly, we deem it necessary, in order to effectuate the purposes of the Act, to require Respondent to bargain with the Union concerning the effects of the closing of its operation on its employees, and shall include in our Order a limited backpay requirement[4] designed both to make whole the employees for losses suffered as a result of the violation and to recreate in some practicable manner a situation in which the parties' bargaining is not entirely devoid of economic consequences for Respondent. We shall do so in this case by requiring Respondent to pay backpay to its employees in a manner similar to that required in *Transmarine Navigation Corporation and its Subsidiary, International Terminals, Inc.*, 170 NLRB 389 (1968). Thus, Respondent shall pay employees backpay at the rate of their normal wages when last in Respondent's employ from 5 days after the date of this Decision and Order until the occurrence of the earliest of the following conditions: (1) the date Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the clos-

[3] See *Burgmeyer Bros., Inc.*, 254 NLRB 1027, 1028 (1981), and cases cited therein. See also *Camdelphia Enterprises, Inc.*, 263 NLRB No. 178 (1982), and *Interstate Gopher News, d/b/a Gulf and Southern News*, 235 NLRB 851 (1978).

[4] The Board, with court approval, has consistently found that backpay orders are appropriate means of remedying 8(a)(5) violations of the type found herein. See *National Car Rental System, Inc.*, 252 NLRB 159 (1980), enfd. 672 F.2d 1182 (3d Cir. 1982).

ing of Respondent's operations on its employees; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 days of this Decision and Order, or to commence negotiations within 5 days of Respondent's notice of its desire to bargain with the Union; or (4) the subsequent failure of the Union to bargain in good faith; but in no event shall the sum to any of these employees exceed the amount he or she would have earned as wages from the date Respondent ceased its operations, to the time he or she secured equivalent employment elsewhere, or the date on which Respondent shall have offered to bargain, whichever occurs sooner; provided, however, that in no event shall the sum be less than these employees would have earned for a 2-week period at the rate of their normal wages when last in Respondent's employ.[5] Interest on all such sums shall be paid in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977).[6]

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. J. W. Carroll & Sons, Division of U.S. Industries, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. General Truck Drivers, Chauffeurs & Helpers, Local 692, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees, including lead machine operators, shipping and receiving employees and local truck drivers employed by Respondent at its plant located at 22600 South Bonita Street, Carson, California, but excluding all other employees, office clerical employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. The above-named labor organization has been and now is the exclusive representative of all employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By failing to afford the above-named labor organization an opportunity to bargain over the effects of the closing of its Carson, California, facility on the employees in the appropriate unit, Respondent has engaged in and is engaging in an unfair labor practice within the meaning of Section 8(a)(5) and (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, J. W. Carroll & Sons, Division of U.S. Industries, Inc., Carson, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Failing and refusing to bargain with General Truck Drivers, Chauffeurs & Helpers, Local 692, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, with respect to the effect on its employees in the appropriate unit of its decision to close its Carson, California, facility. The appropriate unit is:

> All production and maintenance employees, including lead machine operators, shipping and receiving employees and local truck drivers employed by Respondent at its plant located at 22600 South Bonita Street, Carson, California, but excluding all other employees, office clerical employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with the above-named labor organization with respect to the effects on its employees in the above-described unit of its decision to close its Carson, California, facility, and reduce to writing any agreement reached as a result of such bargaining.

(b) Pay the terminated employees their normal wages in the manner set forth in the remedy section of this Decision and Order.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payments, timecards, personnel records and reports, and all other records necessary or useful in checking compliance with this Order.

[5] *Transmarine Navigation Corporation, supra.*

[6] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

(d) Mail a copy of the attached notice marked "Appendix"[7] to each employee in the appropriate unit who was employed by Respondent at its Carson, California, facility immediately prior to Respondent's cessation of operations. Copies of said notice, on forms provided by the Regional Director for Region 21, after being duly signed by Respondent's authorized representative, shall be mailed immediately upon receipt thereof, as hereinabove directed.

(e) Notify the Regional Director for Region 21, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[7] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain with General Truck Drivers, Chauffeurs & Helpers, Local 692, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, concerning the effects of our decision to close the Carson, California, facility on employees in the following appropriate unit set forth below:

All production and maintenance employees, including lead machine operators, shipping and receiving employees and local truck drivers employed by us at our plant located 22600 South Bonita Street, Carson, California, but excluding all other employees, office clerical employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain collectively with General Truck Drivers, Chauffeurs & Helpers, Local 692, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, concerning the effects of our decision to close the Carson, California, facility on employees in the appropriate unit who were then employed there, and will reduce to writing any agreement reached as a result of such bargaining.

WE WILL pay the employees who were employed at the above facility their normal wages in the manner set forth in the Decision and Order of the National Labor Relations Board.

J. W. CARROLL & SONS, DIVISION OF
U.S. INDUSTRIES, INC.